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8-4-2008

AUG 4 2008

MAN

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS MICHAEL W. DOBBINS
EASTERN DIVISION CLERK, U.S. DISTRICT COURT.

Thomas O'Farrell-K54340,) Habeas Corpus Petition
Plaintiff,) Case #08 C 2403
) Honorable Milton I. Shadur,
v.) Presiding Senior Judge
)
Joseph Mathy, Assistant Warden,) Judge Keys,
Defendant,) Magistrate Judge

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Thomas O'Farrell, K54340, Pro-Se, Plaintiff in the above case, will appeal to the United States Court of Appeals, Seventh Circuit from an order issued by the Honorable Milton I. Shadur, Senior Judge of the United States District Court for the Northern District of Illinois, Eastern Division which dismissed Plaintiff's petition for writ of habeas corpus entered in this action on June 18, 2008 and the denial of Plaintiff's motion for reconsideration and leave to file reply to State's limited response to petition for writ of habeas corpus instanter entered in this action on July 21, 2008.

Date:July 27, 2008



Thomas O'Farrell-K54340,
Plaintiff, Pro-Se
P.O. Box 99
Pontiac, Illinois 61764

SEVENTH CIRCUIT COURT OF APPEALS INFORMATION SHEET

Include the names of all plaintiffs (petitioners) and defendants (respondents) who are parties to the appeal. Use a separate sheet if needed.

NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION DOCKET NUMBER: 08cv2403

PLAINTIFF (Petitioner)

v.

DEFENDANT (Respondent)

Thomas O'Farrell/Appellant	Eddie Jones/Appellee
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(Use separate sheet for additional counsel)

PETITIONER'S COUNSEL		RESPONDENT'S COUNSEL	
Name	Thomas O'Farrell (ProSe)	Name	Michael Ryan Blankenheim
Firm	#K-54340	Firm	Office of the Attorney General
Address	Pontiac - PON P.O. Box 99 Pontiac, IL 61764	Address	100 West Randolph Street Chicago, IL 60601
Phone	N/A	Phone	312-814-8826

Other Information

District Judge	Shadur	Date Filed in District Court	4/28/2008
Court Reporter	J. Andrews Ext. 6899	Date of Judgment	6/19/2008, 7/22/2008
Nature of Suit Code	530	Date of Notice of Appeal	8/4/2008

COUNSEL: Appointed Retained Pro Se

FEE STATUS: Paid Due IFP

IFP Pending U.S. Waived

Has Docketing Statement been filed with the District Court Clerk's Office? Yes No

If State/Federal Habeas Corpus (28 USC 2254/28 USC 2255), was Certificate of Appealability:

Granted Denied Pending

If Certificate of Appealability was granted or denied, date of order: _____

If defendant is in federal custody, please provide U.S. Marshall number (USM#): _____

IMPORTANT: THIS FORM IS TO ACCOMPANY THE SHORT RECORD SENT TO THE CLERK OF THE U.S. COURT OF APPEALS PURSUANT TO CIRCUIT RULE 3(A). Rev 04/01

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 3.2.1
Eastern Division

Thomas O'Farrell

Plaintiff,

v.

Case No.: 1:08-cv-02403

Honorable Milton I. Shadur

Eddie Jones

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, June 18, 2008:

MINUTE entry before the Honorable Milton I. Shadur: Enter Memorandum Order. Pursuant to Section 2254 Rule 4, both the Petition and this action are dismissed. Civil case terminated. Mailed notice(srn,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
ex rel. THOMAS O'FARRELL #K54340,)
Petitioner,)
v.) No. 08 C 2403
JOSEPH MATHY, Assistant Warden,¹)
Pontiac Correctional Center,)
Respondent.)

MEMORANDUM ORDER

When this Court first received the self-prepared 28 U.S.C. §2254² Petition for Writ of Habeas Corpus ("Petition") from Thomas O'Farrell ("O'Farrell"), its natural concern as to the Petition's possible untimeliness was heightened (1) by the fact that O'Farrell's state court conviction had occurred more than a decade in the past (on January 21, 1997) and (2) by the need to analyze the timing questions posed by the complex set of O'Farrell's post-conviction efforts in the state court system. This Court therefore ordered the Illinois Attorney General's Office "to file a response to the Petition on or before May 20,

¹ Because original respondent Eddie Jones is no longer the Warden at Pontiac Correctional Center, Assistant Warden Mathy ("Mathy") is now the proper respondent (see Rule 2(a) of the Rules Governing Section 2254 Cases in the United States District Courts ["Section 2254 Rules"].) In accordance with Fed. R. Civ. P. 25(d)(1), this Court orders the substitution of Mathy as respondent that has taken place automatically by reason of Jones' change of status.

² All further references to Title 28's provisions will simply take the form "Section--."

2008 that (1) states whether respondent intends to rely on, or alternatively is prepared to waive, the limitation period prescribed by Section 2244(d)(1) and (2) sets out the particulars as to whether and why the Petition is or is not timely in light of the Section 2244(d)(2)." After one request for an extension of time, that response is now in hand, captioned Limited Response to Petition For Writ of Habeas Corpus ("Response"), and it provides chapter and verse that establish beyond dispute that the Petition is indeed barred by Section 2244(d)(1), even after giving full credit for any tolling prescribed by Section 2244(d)(2).

Because that excellent presentation by Assistant Attorney General Michael Blankenheim covers the ground so thoroughly and accurately, this Court has studied it carefully and has concluded that it would be an act of supererogation simply to parrot what the 25-page Response has explained in such detail. Instead this Court adopts the Response as its own and, pursuant to Section 2254 Rule 4, dismisses both the Petition and this action.



Milton I. Shadur
Senior United States District Judge

Date: June 18, 2008

United States District Court
Northern District of Illinois
Eastern Division

USA ex rel. Thomas O'Farrell

v.

JUDGMENT IN A CIVIL CASE

Case Number: 08 C 2403

Joseph Mathy

- Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.
- Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that final judgment is entered dismissing this action with prejudice pursuant to Fed. R. Civ. P. 58.

Michael W. Dobbins, Clerk of Court

Date: 6/19/2008

/s/ Sandy Newland, Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 3.2.1
Eastern Division

Thomas O'Farrell

Plaintiff,

v.

Case No.: 1:08-cv-02403

Honorable Milton I. Shadur

Eddie Jones

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, July 21, 2008:

MINUTE entry before the Honorable Milton I. Shadur: Enter Memorandum Order. Motion for reconsideration [21] is denied.; Motion for leave to file [21] is grantedMailed notice(srn,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
ex rel. THOMAS O'FARRELL #K54340,)
)
 Petitioner,)
)
v.) No. 08 C 2403
)
JOSEPH MATHY, Assistant Warden,)
Pontiac Correctional Center,)
)
 Respondent.)

MEMORANDUM ORDER

Although this Court's handling of petitions seeking habeas corpus relief under 28 U.S.C. §2254¹ most typically produces extended opinions that are needed to address the often multifaceted submissions by prisoners serving state court sentences, this case is highly unusual in that respect. This Court's June 18, 2008 memorandum order ("Order") dismissing the pro se Petition that had been submitted by Thomas O'Farrell ("O'Farrell") encompassed just two pages, because the "excellent presentation by Assistant Attorney General Michael Blankenheim covers the grounds so thoroughly and accurately" (Order at 2) that this Court eschewed any detailed discussion of the issues, instead adopting defense counsel Blankenheim's Response as its own.

O'Farrell then filed a timely motion for reconsideration,

¹ All further references to Title 28's provisions will simply take the form "Section--."

which was appropriate for consideration under Fed. R. Civ. P. ("Rule") 59(e), and Assistant Attorney General Blankenheim has filed a Response in Opposition to Petitioner's Motion for Reconsideration, and that submission exhibits the same high quality as the original filing. It confirms these relevant principles:

1. O'Farrell's effort to challenge or recharacterize the Illinois courts' rejection of O'Farrell's filing of an Affidavit of Intent To File an Appeal as the equivalent of the notice of appeal itself represents a state procedural ruling that does not render that filing a "properly filed" application for state post-conviction relief that tolls the one-year limitations period under Section 2244(d) (2) (Artuz v. Bennett, 531 U.S. 4, 8-9 (2000); Fernandez v. Sternes, 227 F.3d 977, 978 (7th Cir. 2000) (anticipating Artuz)).

2. O'Farrell's attempted appeal from the state trial court's dismissal of his first state post-conviction petition was rejected as "procedurally irregular"--the prototype of a state procedural ruling that flunks the Artuz standard for tolling the applicable limitations period.

3. O'Farrell's false testimony claim is also independently untimely for the reasons stated in Response at 6-8.

4. Nor did any equitable tolling of the limitations

period under Section 2244(d)(1) operate to save the timeliness of the Petition (see, e.g., Lo v. Endicott, 506 F.3d 572, 576 (7th Cir. 2007); Modrowski v. Mote, 322 F.3d 965, 967 (7th Cir. 2003)).

There is more, but once again the high quality of defense counsel's submission has enabled this Court simply to adopt it as a dispositive refutation of O'Farrell's motion for reconsideration. That motion is denied.



Milton I. Shadur
Senior United States District Judge

Date: July 21, 2008

APPEAL, HABEAS, KEYS, TERMED

**United States District Court
Northern District of Illinois - CM/ECF LIVE, Ver 3.2.1 (Chicago)
CIVIL DOCKET FOR CASE #: 1:08-cv-02403
Internal Use Only**

O'Farrell v. Jones et al

Assigned to: Honorable Milton I. Shadur

Cause: 28:2241 Petition for Writ of Habeas Corpus

Date Filed: 04/28/2008

Date Terminated: 06/18/2008

Jury Demand: None

Nature of Suit: 530 Prisoner: Habeas Corpus

Jurisdiction: Federal Question

Petitioner

Thomas O'Farrell

United States of America, ex rel.

represented by **Thomas O'Farrell**
#K-54340
Pontiac - PON
P.O. Box 99
Pontiac, IL 61764
PRO SE

V.

Respondent

Eddie Jones

Warden

represented by **Michael Ryan Blankenheim**
Office of the Attorney General
100 West Randolph Street
Chicago, IL 60601
(312) 814-8826
Email: mblankenheim@atg.state.il.us
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Service List

represented by **Chief of Criminal Appeals**
Attorney General's Office
100 West Randolph - 12 Floor
Chicago, IL 60601
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
04/28/2008	 1	RECEIVED PETITION for writ of habeas corpus and 1 copy filed by Thomas O'Farrell against Eddie Jones (Attachments: # 1 Exhibit 16-1, # 2 Cont'd I-155, # 3 Cont'd 16-57).(Poor Quality Original-Paper Document on File)(gej,) (Entered:

		04/30/2008)
04/28/2008	 2	CIVIL Cover Sheet (gej,) (Entered: 04/30/2008)
04/28/2008	 3	APPLICATION by Petitioner Thomas O'Farrell for leave to proceed in forma pauperis; (Attachments). (gej,) (Entered: 04/30/2008)
04/28/2008	 4	POST MARKED envelope for initiating document by Thomas O'Farrell (Document not scanned) (aew,) (Entered: 05/02/2008)
04/30/2008	 5	MAILED Copy of Petition for Writ of Habeas Corpus to Chief of Criminal Appeals by certified mail, number 7006 0100 0001 7312 6295. (gej,) (Entered: 04/30/2008)
05/01/2008	 5	MINUTE entry before Judge Honorable Milton I. Shadur: Enter Memorandum Order. O'Farrell's application to proceed in forma pauperis is denied.(3-1) O'Farrell is ordered to remit the \$5 filing fee to the Clerk of The Court on or before May 15,2008. The Illinois Attorney General's Office is ordered to file a response to the response to the Petition on or before May 20,2008.Mailed notice (vcf,) (Entered: 05/05/2008)
05/01/2008	 6	MEMORANDUM Order Signed by Judge Honorable Milton I. Shadur on 5/1/2008.(vcf,) (Entered: 05/05/2008)
05/12/2008	 7	ATTORNEY Appearance for Respondent Eddie Jones by Michael Ryan Blankenheim (Blankenheim, Michael) (Entered: 05/12/2008)
05/12/2008	 8	MOTION by Respondent Eddie Jones for extension of time <i>in which to comply with this Court's order of May 1, 2008</i> (Blankenheim, Michael) (Entered: 05/12/2008)
05/12/2008	 9	NOTICE of Motion by Michael Ryan Blankenheim for presentment of extension of time 8 before Honorable Milton I. Shadur on 5/21/2008 at 09:15 AM. (Blankenheim, Michael) (Entered: 05/12/2008)
05/13/2008	 10	MINUTE entry before Judge Honorable Milton I. Shadur:Enter Proposed Order. Petitioner is to be made available for a telephone conference on May 21, 2008 at 9:15 a.m.Mailed notice (gej,) (Entered: 05/15/2008)
05/13/2008	 11	ORDER Signed by Judge Honorable Milton I. Shadur on 5/13/2008.(gej,) (Entered: 05/15/2008)
05/21/2008	 12	MINUTE entry before the Honorable Milton I. Shadur:Motion for extension of time to June 19, 2008 to comply with this Court's order 8 is granted; Motion hearing held on 5/21/2008. Mailed notice (srn,) (Entered: 05/22/2008)
06/12/2008	 15	MOTION by Petitioner Thomas O'Farrell for Instructions. (gej,) (Entered: 06/16/2008)
06/13/2008	 13	MINUTE entry before the Honorable Milton I. Shadur:Enter Memorandum Order. Accordingly, as and when the Assistant Attorney General assigned to this case provides the necessary information, an order of substitution will be entered, but in the meantime the action will proceed as originally contemplated without the need for any further action on O'Farrell's part.Mailed notice (srn,) (Entered: 06/13/2008)

06/13/2008	 14	MEMORANDUM Order Signed by the Honorable Milton I. Shadur on 6/13/2008:Mailed notice(srn,) (Entered: 06/13/2008)
06/17/2008	 16	Limited Response to Petition for Writ of Habeas Corpus by Eddie Jones (Blankenheim, Michael) (Entered: 06/17/2008)
06/17/2008	 20	STATE Court Record (Attachments: # 1 Continuance #1 of Document, # 2 Continuance #2 of Document)(gej,) (Poor Quality Original-Paper Document on File) (Entered: 06/19/2008)
06/18/2008	 17	MINUTE entry before the Honorable Milton I. Shadur: Enter Memorandum Order. Pursuant to Section 2254 Rule 4, both the Petition and this action are dismissed.Civil case terminated. Mailed notice (srn,) (Entered: 06/19/2008)
06/18/2008	 18	MEMORANDUM Order Signed by the Honorable Milton I. Shadur on 6/18/2008:Mailed notice(srn,) (Entered: 06/19/2008)
06/19/2008	 19	ENTERED JUDGMENT Signed on 6/19/2008:(srn,) (Entered: 06/19/2008)
07/01/2008	 21	MOTION by Petitioner Thomas O'Farrell for reconsideration and leave to file Reply to State's Limited Response to Petition for Writ of Habeas Corpus Instanter; (Attachment). (gej,)(Poor Quality Original - Paper Document on File). (Entered: 07/03/2008)
07/09/2008	 22	MINUTE entry before the Honorable Milton I. Shadur:Enter Memorandum Order. This Court therefore orders the Attorney General's OFFice to file a response to O'Farrell's current filing, still focusing solely on the issue of timeliness or untimeliness, on or before July 25, 2008. This Court will then be in a position to address O'Farrell's motion for reconsideration on a better-informed basis.Mailed notice (srn,) (Entered: 07/09/2008)
07/09/2008	 23	MEMORANDUM Order Signed by the Honorable Milton I. Shadur on 7/9/2008:Mailed notice(srn,) (Entered: 07/09/2008)
07/16/2008	 24	RESPONSE by Eddie Jonesin Opposition to MOTION by Petitioner Thomas O'Farrell for reconsiderationMOTION by Petitioner Thomas O'Farrell for leave to file 21 (Blankenheim, Michael) (Entered: 07/16/2008)
07/21/2008	 25	MINUTE entry before the Honorable Milton I. Shadur: Enter Memorandum Order. Motion for reconsideration 21 is denied.; Motion for leave to file 21 is grantedMailed notice (srn,) (Entered: 07/22/2008)
07/22/2008	 26	MEMORANDUM Order Signed by the Honorable Milton I. Shadur on 7/22/2008:Mailed notice(srn,) (Entered: 07/22/2008)
08/04/2008	 27	MOTION by Petitioner Thomas O'Farrell for leave to file and proceed on appeal in forma pauperis; (Attachments). (gej,) (Entered: 08/07/2008)
08/04/2008	 28	NOTICE of appeal by Thomas O'Farrell regarding orders 17 , 18 , 19 , 25 , 26 . (IFP Pending) (gej,) (Entered: 08/07/2008)
08/04/2008	 29	MOTION by Petitioner Thomas O'Farrell for certificate of appealability on Appeal from denial of Writ of Habeas Corpus. (gej,) (Entered: 08/07/2008)